Jade Handbag, Inc., and Sol Klayminc *and* Leather Goods, Plastics, Handbags & Novelty Workers' Union, Local 1. Case 2–CA–19574

19 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

Upon a charge filed by the Union on 14 April 1983 the General Counsel of the National Labor Relations Board issued a complaint on 27 May 1983 against the Company and Sol Klayminc, the Respondents, alleging that they have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company and Sol Klayminc have failed to file answers.

On 25 July 1983 the General Counsel filed a Motion for Summary Judgment. On 29 July 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither the Company nor Sol Klayminc filed a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board."

In the absence of good cause being shown for the failure of the Respondent to file timely answers, we grant the General Counsel's Motion for Summary Judgment,[1] but only against the Company. Although the General Counsel named Sol Klayminc, the Company's president, as a respondent in the complaint, the complaint contains no allegation that justifies imposing individual liability on him. Accordingly, to the degree the General Counsel may seek to hold Respondent Sol Klayminc individually liable, we deny that aspect of the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a New York corporation, was engaged in the manufacture and distribution of leather handbags and related products at its facility in New York, New York, and was an employer-member of the New York Industrial Council of the National Handbag Association (herein the Association). The Association, inter alia, represents its employer-members in negotiating and administering collective-bargaining agreements with the Union. Annually, the employer-members of the Association, in operating their businesses, collectively purchase and receive at their respective facilities in New York State products, goods, and materials valued in excess of $50,000 directly from firms located outside the State of New York. We find that the Association and each of its employer-members are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The following employees of the Company constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production employees, shipping and receiving clerks, maintenance employees, pattern makers (also known as samplemakers and/or designers), employed by the employers who are members of the Association; but excluding head shipping clerks and other supervisors as defined in the National Labor Relations Act as amended.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and continues to be, the exclusive collective-bargaining representative of the employees in this unit. The Union and the Company, through the Association, have been parties to successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from 25 April 1981 through 24 April 1984.

[1] In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaints. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

B. *The 8(a)(1) Violation*

Since on or about 15 October 1982 the Company has failed and refused to remit dues to the Union and to make contributions to the Insurance Trust Fund and the Joint Retirement Fund as its most recent collective-bargaining agreement with the Union requires.[2] Accordingly, we find that the Company, by this conduct, has violated Section 8(a)(1) of the Act.[3]

C. *The 8(a)(3) and (1) Violations*

Since at least on or about 15 October 1982 the Company has subcontracted out work its employees in the unit described above normally perform. As a result, the Company laid off, among others, the unit employees listed below.

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Patira Montalvo	

Since on or about the dates of their layoffs, the Company has failed and refused to recall these employees to their former jobs. We find that the Company engaged in the conduct described above because its employees joined, supported, and assisted the Union, and in order to discourage employees from engaging in such activities or other protected concerted activities for the purpose of collective bargaining or other mutual aid and protection. Accordingly, we find that the Company, by the foregoing conduct, has violated Section 8(a)(3) and (1) of the Act.

D. *The 8(a)(5) and (1) Violations*

Since on or about 15 February 1983 the Company has failed and refused to abide by the terms of the Machinery of Adjustment and Arbitration provision of its collective-bargaining agreement with the Union.

Since at least on or about 15 October 1982 the Company has subcontracted out unit work and, as a result, has laid off unit employees. The Company accomplished the foregoing without notifying the Union and without affording the Union an opportunity to bargain over the decisions or their effects.

On or about April 1983, the Company closed its facility without prior notice to the Union and without affording the Union an opportunity to bargain over the effects of the closure.

Based on the foregoing conduct, as well as the conduct previously described in section II, B and C, we find that the Company has repudiated its obligation to recognize and bargain with the Union as the exclusive collective-bargaining representative of its unit employees.

Accordingly, we find that the Company, by the conduct described in each of the preceding paragraphs, has violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By failing and refusing since on or about 15 October 1982 to remit dues to the Union and to make contributions to the Insurance Trust Fund and the Joint Retirement Fund, as the parties' most recent collective-bargaining agreement requires, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By subcontracting out unit work since at least on or about 15 October 1982 and by laying off and refusing to recall, among others, the unit employees listed below, because its employees joined, supported, or assisted the Union, and to discourage its employees from engaging in such activities or other protected concerted activities, the Company violated Section 8(a)(3) and (1).

Hector Montes	Digna Rodriguez
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[2] Although the complaint refers to these events as occurring "on or about October 15, 1983," we find this to be an inadvertent error because the complaint issued on 27 May 1983.

[3] The General Counsel did not specifically allege that the Company's conduct also violated Sec. 8(a)(5), even though the alleged facts support such a finding. Absent a specific allegation, and also because the remedies for both violations would be identical, we decline to make this additional finding.

3. By failing and refusing to abide by the terms of the Machinery of Adjustment and Arbitration provison of the collective-bargaining agreement since at least on or about 15 February 1983, by subcontracting out unit work since at least on or about 15 October 1982, by laying off unit employees without notifying the Union and without affording the Union an opportunity to bargain over the decisions and their effects, by closing its facility on or about April 1983 without prior notice to the Union and without bargaining with the Union over the effects of the closure, and by repudiating its obligation to recognize and bargain with the Union as the exclusive collective-bargaining representative of its unit employees, the Company violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure to remit dues to the Union and to make payments to certain employee benefit funds, we shall order it to remit to the Union the dues it unlawfully withheld, plus interest as computed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and to make its employees whole for making the requisite benefit fund payments and by reimbursing its employees in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), for any expenses ensuing from the Respondent's failure to make these payments. Any additional amounts that the Respondent must pay into the benefit funds to satisfy our "make-whole" remedy shall be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

To remedy the Respondent's discriminatory subcontracting out of unit work and layoff of unit employees, we shall order the Respondent to make whole the employees listed below, as well as any other employee laid off as a result of its discrimination, for any loss of earnings and other benefits from the date of layoff to the date the Respondent closed its facility, less any net interim earnings as computed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as precribed in *Florida Steel Corp.*, supra.

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Because the Respondent closed its New York City facility for economic reasons after it began subcontracting out unit work, we shall not order it to restore the status quo ante by resuming its former method of operation and offering these employees reinstatement. To further effectuate the policies of the Act, however, should the Respondent ever resume its operation or a similar operation in the New York City area, we shall require the Respondent to offer these employees reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions.

We have found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to abide by the terms of the Machinery of Adjustment and Arbitration provision of its collective-bargaining agreement. To dissipate the effects of this unlawful action, we shall order the Respondent to abide by the arbitration provision and to process all grievances in accordance with its terms from on or about 15 February 1983, the date the Respondent repudiated the provision.

We have also found that the Respondent violated Section 8(a)(5) and (1) in other respects. Thus, to remedy the Respondent's refusal to bargain over the effects of closing its facility, we shall order the Respondent to bargain with the Union, on request, concerning the effects of the closure. Further, in order to assure meaningful bargaining and to effectuate the purposes of the Act, we shall accompany our order to bargain with a requirement that the Respondent provide backpay to unit employees in a manner similar to that prescribed in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Thus, the Respondent shall pay employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closure on its unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of this decision's issuance or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain

with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall such sums paid to any of these employees exceed the amount each would have earned as wages from the date on which the Respondent closed its facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, supra, with interest as prescribed in *Florida Steel Corp.*, supra.

Further, the Respondent shall be required, in consultation with the Union, to establish a preferential hiring list of all its laid-off unit employees pursuant to a nondiscriminatory system such as seniority. If the Respondent ever resumes operations anywhere in the New York City area, it shall be required to offer these employees reinstatement.

In the circumstances of this case, the Respondent's refusal to bargain over its decisions to subcontract out unit work and to lay off unit employees, as well as its refusal to bargain over the effects of these decisions, do not require specific affirmative remedial provisions. The Respondent's backpay liability for these 8(a)(5) violations would cease, in any event, as of the date it lawfully closed its facility. Therefore, the backpay remedy for the Respondent's 8(a)(3) violation set forth above subsumes the remedy for these additional violations of Section 8(a)(5).

Finally, having found that the Respondent repudiated its obligation to recognize and bargain with the Union, we shall order the Respondent to recognize the Union and to bargain with it as the exclusive representative of its employees in the bargaining unit.

ORDER

The National Labor Relations Board orders that the Respondent, Jade Handbag, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit union dues to Leather Goods, Plastics, Handbags & Novelty Workers' Union, Local 1, and to make contributions to Insurance Trust Fund and the Joint Retirement Fund as its collective-bargaining agreement which the Union requires.

(b) Subcontracting out unit work and laying off and refusing to recall unit employees because its employees joined, supported, or assisted the Union, and to discourage its employees from engaging in such activities or other protected concerted activities.

(c) Failing and refusing to abide by the terms of the collective-bargaining agreement's Machinery of Adjustment and Arbitration provision.

(d) Subcontracting out unit work and laying off unit employees without notifying the Union and without affording the Union an opportunity to bargain concerning these decisions and their effects on unit employees.

(e) Closing its facility without notice to the Union and without affording the Union an opportunity to bargain over the effects of the closure on unit employees.

(f) Repudiating its obligation to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues it has withheld and make whole the employees in the bargaining unit by transmitting the payments it owes to the benefit funds pursuant to the terms of the collective-bargaining agreement, and by reimbursing unit employees for any expenses ensuing from its failure to make such payments, in the manner set forth in the remedy section of this decision.

(b) Make whole the employees listed below, as well as any other employees laid off as a result of its discrimination, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

Hector Montes	Digna Rodriguez
Nancy Carbonell	Laura Rodriguez
Delia Alvarez	Lillian Rosas
Efrain Suazo	Clotilde Torres
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If the Respondent ever resumes its operation or a similar operation in the New York City area, it shall offer these employees reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Remove from its files any reference to the unlawful layoffs and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(d) Abide by the terms of the Machinery of Adjustment and Arbitration provision of its collective-bargaining agreement and process all grievances as set forth in the remedy section of this decision.

(e) Pay the unit employees laid off as a result of the Respondent's closure of its New York, New York, facility their normal wages for the period set forth in the remedy section of this decision.

(f) Upon request, bargain collectively with the Union as the exclusive representative of the unit employees with respect to the effects on such employees of its decision to close its facility, and reduce to writing any agreement reached as result of such bargaining.

(g) Establish in consultation with the Union a preferential hiring list of all employees in the unit who were laid off in or about April 1983 as a result of the closure of the Respondent's facility, pursuant to a nondiscriminatory system such as seniority. If operations are ever resumed anywhere in the New York City area, offer reinstatement to those employees. If Respondent resumes operations at the New York City facility, it shall offer all those in the unit reinstatement to their former positions or, if such positions no longer exists, to substantially equivalent positions.

(h) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production employees, shipping and receiving clerks, maintenance employees, pattern makers (also known as samplemakers and/or designers), employed by the employers who are members of the Association; but excluding head shipping clerks and other supervisors as defined in the National Labor Relations Act as amended.

(i) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Mail an exact copy of the attached notice marked "Appendix"[4] to the Union and to all unit employees employed by the Respondent at its New York, New York facility immediately prior to the Respondent's cessation of operations at the facility in or about April 1983. Post at this facility, or any other facility to which it has subsequently moved, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt, as directed above, and posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to remit employees' union dues to Leather Goods, Plastics, Handbags & Novelty Workers' Union, Local 1, and to make contributions to the Insurance Trust Fund and the Joint Retirement Fund as the collective-bargaining agreement with the Union requires.

WE WILL NOT subcontract out bargaining unit work and lay off and refuse to recall unit employees or otherwise discriminate against any of you for supporting Leather Goods, Plastics, Handbags & Novelty Workers' Union, Local 1, or any other union, or to discourage you from engaging in these or any other protected concerted activities.

WE WILL NOT fail and refuse to abide by the collective-bargaining agreement's Machinery of Adjustment and Arbitration provision.

WE WILL NOT subcontract out unit work and lay off unit employees without notifying the Union and affording the Union an opportunity to bargain over these decisions and their effects on unit employees.

WE WILL NOT close our New York City facility without notifying the Union and, on request, bargaining concerning the effects of the closure on unit employees.

WE WILL NOT repudiate our obligation to recognize and bargain with the Union as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT remit to the Union the union dues we have withheld, and WE WILL make whole unit employees by transmitting any payments we owe to benefit funds pursuant to the terms of our collective-bargaining agreement with the Union, and by reimbursing these employees for any expenses ensuing from our failure to make the required payments.

WE WILL make whole the employees listed below, as well as any other employee laid off as a result of our discrimination, for any loss of earnings, and other benefits resulting from their layoffs, less any net interim earnings, plus interest. If we ever resume our operation or a similar operation in the New York City area, WE WILL offer these employees reinstatement to their former or substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

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WE WILL notify them that we have removed from our files any reference to their layoffs and that the layoffs will not be used against them in any way.

WE WILL abide by the collective-bargaining agreement's arbitration provision and process accordingly all grievances that should have been processed since about 15 February 1983.

WE WILL, on request, bargain collectively with the Union concerning the effects of our decision to close our New York City facility on all unit employees employed at that facility, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL establish in consultation with the Union a preferential hiring list of all employees in the unit and, if operations are ever resumed in the New York City area, WE WILL offer these employees reinstatement.

WE WILL make whole unit employees employed at our New York City facility for any loss of pay they may have suffered as a result of our failure to bargain about the effects of the closing of this facility, for the period the National Labor Relations Board decides, with interest.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All production employees, shipping and receiving clerks, maintenance employees, pattern makers (also known as samplemakers and/or designers), employed by the employers who are members of the Association; but excluding head shipping clerks and other supervisors as defined in the National Labor Relations Act as amended.

JADE HANDBAG, INC.